



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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December 29, 2016

Jennifer Cheatham, Ed.D.
Superintendent
Madison Metropolitan School District
545 West Dayton Street
Madison, Wisconsin 53703

OCR Case No. 05-14-5002

Dear Dr. Cheatham:

This is to advise you of the resolution of the above-referenced compliance review that was initiated at the Madison Metropolitan School District (District) by the U.S. Department of Education's (Department) Office for Civil Rights (OCR) on March 19, 2014. The compliance review examined whether the District discriminates against African-American and/or Hispanic students with respect to access, referral, identification, and selection for the District's Advanced Learner (AL) services; middle school advanced or honors courses; high school Advanced Placement (AP), advanced, honors, and other high-level and career-building courses; as well as access to foundation courses that are essential to prepare students to take rigorous courses in middle and high school, and to provide them with the skills necessary for success in college and/or career.

OCR conducted this review under Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation at 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color, or national origin in programs or activities operated by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the District is subject to Title VI and its implementing regulation.

During its investigation, OCR reviewed data obtained from the District and information publicly available from the Wisconsin Department of Public Instruction (WDPI), which is the state of Wisconsin's educational agency. OCR also conducted an on-site visit to the District and interviewed the Superintendent, the Assistant Superintendent for Teaching and Learning, the Director of Curriculum and Instruction, the Director of Advanced Learning, four high school principals, one Coordinator for Multi-Tiered Systems of Support, twelve middle- and high-school counselors, and fifteen elementary school, middle school, and high school Advanced Learner-Instructional Resource Teachers.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Prior to the conclusion of OCR's investigation, the District expressed an interest in voluntarily resolving the issues of the compliance review. Discussions between OCR and the District resulted in the District's execution of the enclosed resolution agreement (Resolution Agreement) on October 28, 2016, which, when fully implemented, will resolve the issues of this review. This letter presents the applicable legal standards and provides a summary of the information gathered during the review and how the review was resolved.

APPLICABLE LEGAL STANDARDS

If a school district offers AP courses, talented and gifted or advanced learner programs or services, advanced or honors courses, other high-level and career building courses, or foundation courses that are essential to prepare students to take rigorous courses in middle and high school and to provide them with the skills necessary for success in college and/or career, Title VI requires that those courses, programs and services be made available on a nondiscriminatory basis, without regard to a student's race, color, or national origin. If the Department determines that a school district discriminated against students based on their race, color, or national origin in the provision of such courses, programs or services at schools, in the admission of students to these courses, programs or services at schools that offer them, or in the administration of these courses, programs or services, the Department will make a finding that the school district has violated Title VI.

The applicable standards for determining compliance under Title VI are set forth in the regulation implementing Title VI at 34 C.F.R. § 100.3(a), (b)(1) and (2). The administration of how students participate in educational programs can result in unlawful discrimination based on race, color, or national origin in two ways: first, if students are subject to different treatment based on their race, color, or national origin and, second, if a policy, procedure or practice is neutral on its face and administered neutrally but has a disproportionate and unjustified effect on students of a particular race, color, or national origin.

Different Treatment

The Title VI regulation at 34 C.F.R. § 100.3(a) provides that no person shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program operated by a recipient. Section 100.3(b)(1) prohibits a recipient, on the ground of race, color, or national origin, from denying an individual a service or benefit of a program; providing different services or benefits; subjecting an individual to segregation in any matter related to the receipt of a service or benefit; restricting an individual in any way in receiving a service or benefit; treating an individual differently in determining whether s/he satisfies any admission or eligibility requirement for provision of a service or benefit; and denying an individual an opportunity to participate in a program or affording him/her an opportunity to do so which is different from that afforded to others.

In determining whether a recipient discriminated against an individual on the basis of race, color, or national origin, OCR first determines if there are any apparent differences in treatment of similarly situated students of another race, color, or national origin. If apparent different treatment is found, then OCR evaluates the reason, if any, offered by the recipient to explain the differences in treatment to determine whether the reason is legitimate and non-discriminatory or whether the reason is merely a pretext for unlawful discrimination.

Additionally, OCR considers whether the recipient treated students in a manner that was consistent with its established policies and procedures and whether there is any other evidence of discrimination based on race, color, or national origin.

Disparate Impact

A recipient may not employ a facially neutral procedure or practice that has a disparate impact on students of a particular race, color, or national origin, if the recipient lacks a substantial legitimate justification for this result. Section 100.3(b)(2) prohibits a recipient from utilizing criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin. In a disparate impact case, OCR must establish whether there has been a disproportionate denial of opportunity to benefit from a program and determine if this is due to a neutral policy, procedure, or practice.

If so, OCR will assess whether the evidence establishes that the recipient's policy, procedure, or practice is educationally necessary and determine if a less discriminatory alternative exists. If the evidence does not establish that the policy, procedure, or practice is necessary to meet an important educational goal, then it must be eliminated. Even if the policy, procedure, or practice is determined to be necessary to meet an important educational goal, discrimination may still be occurring if there is a less discriminatory alternative that the recipient does not use that would meet the recipient's important educational goal or the recipient's preferred justification is a pretext for discrimination.

STATEMENT OF FACTS

Background

District Profile

The Madison Metropolitan School District is the second largest public school district in Wisconsin with an enrollment in the 2015-16 school year of 27,112 students. Of this number, 4,828 or 17.8% were African American students, 5,554 or 20.5% were Hispanic students, and 11,724 or 43.2% were white students. In addition, 2,425 or 8.9% were Asian students, 2,472 or 9.1% were students of two or more races, and 109 or 4.0% were American Indian or Pacific Islander students. There are 51 schools in the District: 4 high schools, 1 non-traditional high school, 1 alternative high school, 12 middle schools, 1 alternative middle school, and 32 elementary schools.

The District has undergone considerable change in the past seven years in terms of student demographics, leadership, curriculum, and approach to AL services.¹ The District informed OCR that its student body became a "minority-majority" population in the 2009-10 school year. The District's Hispanic student population has been increasing while its African American and white student populations have been decreasing, both in number and proportion. This has been occurring at the elementary and high school levels. At the middle

¹ Prior to 2014, the District designated its advanced offerings as part of its Talented and Gifted or "TAG" program. The District ceased reference to TAG, replacing it with the designation "advanced learning" to coincide with the creation of its Advanced Learning Department and its hiring of a Director of Advanced Learning.

school level, the Hispanic student population has been increasing and the African American student population has been decreasing while the white student population has fluctuated.²

The District has also experienced turnover of its senior leadership. The previous superintendent retired in 2012, after which an interim superintendent provided leadership until the current superintendent (Superintendent) began her duties in April 2013. The position of Assistant Superintendent for Secondary Schools was held by three different individuals from 2011 to 2013. In addition, the District's Director of Talented and Gifted (TAG) programs retired in May 2014 and a new administrator with the title "Director of Advanced Learning" (AL Director) was hired in September 2014. In October 2016 the AL Director left the District. The position is currently held by an Interim Director of Advanced Learning.

According to the Superintendent, the District did not have a unified curriculum prior to the 2013-2014 school year. The District recently reported to OCR that it is implementing "a multi-year, multi-phased plan to engage in course alignment. The end result will be courses that share a common course plan, common titles and course descriptions in the high school course guides, syllabi using common templates and common end-of-course summative assessments." As summarized below, the District's current approach to AL services is the product of several programs and initiatives as well as a recently concluded audit by WDPI.

Dual Pathways Plan and WDPI Audit

In 2008 the District received a \$5.3 million Smaller Learning Communities grant from the Department. With these funds the District began, in its words, "to rethink and re-conceptualize the high school experience." As a result of this process, the District in October 2010 announced the "Dual Pathways Plan," with goals that included aligning the curriculum among all four high schools; closing the achievement gap between white students and students of color; and remedying what the District concedes was unequal access for students to advanced courses. The District proposed to meet these goals by implementing two different pathways for high school students: a "preparatory pathway" and an "accelerated pathway."

In March 2011, WDPI concluded an investigation of the District's TAG program by determining that the District had failed to comply with four state of Wisconsin requirements for TAG programs: (1) establish a TAG plan and hire a TAG coordinator; (2) identify TAG students in multiple domain areas, including intellectual, academic, creative, leadership, and the arts; (3) provide access to TAG programming without cost; and (4) allow parents to participate in identification and programming. The District subsequently adopted and implemented a corrective action plan to address findings of WDPI's audit. On February 6, 2015, WDPI concluded monitoring the implementation of the District's corrective action plan, finding the District in compliance with all relevant statutory requirements for TAG programs in Wisconsin.

Also in 2011, in response to unfavorable feedback from parents and community members regarding the Dual Pathways proposal, the District modified the proposal and enacted a more modest series of reforms focusing on curriculum alignment. The District began to scale back

² For instance, Hispanic elementary enrollment grew from 20.3% to 21.9% from 2011 to 2015, while white enrollment declined from 43.4% to 42.0% and African-American enrollment declined from 19.0% to 16.8%.

its use of prerequisites for advanced high school courses, implementing a system of “recommended skills and experiences.” The District also increased its advanced course offerings for the ninth and tenth grade, and expanded its assessment of elementary and middle school students for advanced learning opportunities by broadening its reliance on qualitative factors like teacher recommendations.

AVID (Advancement via Individual Determination)

A more enduring initiative to afford equal access to advanced courses in the District is the AVID program, which launched in pilot form at East High School in 2007 and is now offered at all four traditional District high schools and at two District middle schools. AVID is a national college readiness initiative whose local chapters identify students in the “academic middle” who “are falling short of their potential.” The program is open to all students who meet certain behavioral and academic requirements, and its coursework is elective-based. Students who hope to attend college but earn Bs, Cs, and Ds, are the main beneficiaries of AVID’s programming. AVID offers an elective course on college-preparation, as well as subject-matter instruction and study strategies. AVID students are expected to attempt AP or honors courses.

In 2013 the Wisconsin Center for the Advancement of Postsecondary Education (WISCAPE)³ evaluated the effectiveness of the District’s AVID program. WISCAPE’s report states that African-American and Hispanic students participated in AVID at a rate greater than their overall enrollment at the middle- and high-school level. The report concludes that “the AVID program positively boosts college readiness for high school students, particularly students from low-income families and students of color.” The report’s specific findings include that “AVID appears to boost the chances of high school graduation, improve cumulative [grade point averages], increase participation in AP/honors courses, improve attendance records, and result in fewer behavioral referrals.” AVID students across races had lower rates of absenteeism and behavioral referral than a control group, and higher rates of enrollment in AP/honors courses.

One area where the WISCAPE report identified less success was in African-American students’ performance in AP and honors courses. While AVID students enrolled in such courses at a higher rate than a control group of African-American students, the control group earned higher grades in AP and honors courses than the group of African-American AVID students. In acknowledging to OCR that its AVID program continues to be challenged in this regard, the District expressed optimism that its ongoing curriculum alignment and school improvement planning will improve student performance.

High School Graduation Requirements

Consistent with Wisconsin state law, for students graduating prior to July 1, 2016, the District required students to have earned a total of 22 credits, including 4 in English, 3 in Social Studies, 2 in Mathematics, 2 in Science, 1 ½ in Physical Education, ½ in Health and 9 in electives. Students graduating on or after July 1, 2016 are required to have earned a total of 22 credits, including 4 in English, 3 in Social Studies, 3 rather than 2 in Mathematics, 3

³ WISCAPE is affiliated with the School of Education at the University of Wisconsin – Madison. Its mission is “to promote the creation and sharing of ideas for addressing Wisconsin’s postsecondary education challenges.” <https://www.wiscapewisc.edu/>.

rather than 2 in Science, 1 ½ in Physical Education, ½ in Health, and 7 rather than 9 in electives.⁴

Honors and AP Programs: Middle and High School Levels

Scope, Consistency and Alignment, Access, and Administration

The District offers honors and AP courses to provide enriched academic opportunities for students. The District does not offer an International Baccalaureate program. Students can take honors courses at the middle school level, and both honors and AP courses at the high school level. None of the high schools offers weighted grades or credits for honors or AP courses. The District's offering of honors and AP courses varies among schools, and neither the alternative high school (Shabazz City High School) nor the non-traditional high school (Innovative and Alternative Education) which focuses on experiential learning, offers such courses.

The District offered 23 different AP courses in multiple sections during the 2013-14 school year and 24 different AP courses during the 2015-16 school year. Recognizing that its AP course offerings vary across its four high schools, the District recently completed a three-year plan for course vetting and course alignment that includes AP coursework. Pursuant to this plan, the District plans to standardize across all four high schools AP courses that do not have pre-requisites. In addition, the District's Director of Curriculum and Instruction said the District has the goal to have a standard set of AP courses across all four high schools; the schools will not necessarily offer all of the same courses, but the AP courses each offers will be drawn from the same set of AP courses. The District will gauge student interest in AP courses in deciding where to offer the courses. However, the District will ensure that core AP courses, such as Physics and English, will be offered at all four high schools. The AL Director noted that a first step in offering higher level math courses at all high schools is to ensure that Algebra I is the same at all schools; the Director of Curriculum and Management confirmed that the District is realigning the math curriculum.

The office of AL Director is spearheading the District's efforts to make the District's honors and AP course offerings more consistent across District schools. According to the Assistant Superintendent for Teaching and Learning (AS for Learning), an AP coordinator at each high school is responsible for monitoring AP enrollment, planning professional development needs, and assisting the AL-Instructional Resource Teacher assigned to the high schools with facilitating administration of AL services at the schools.

Other changes regarding AP opportunities were identified to OCR by a counselor at LaFollette High School (Counselor A), who told OCR that his/her school has introduced additional AP courses that are stand-alone courses. These stand-alone courses include AP Government, AP Environmental Science, AP Psychology, and AP European History. Counselor A observed that these courses do not have prerequisites and are not part of a series of courses, and therefore are less intimidating to students. Counselor A also expressed the belief that these courses may be more accessible to AVID students, who may not have taken higher-level courses throughout middle and high school.

⁴ These requirements apply to students attending schools following a regular schedule. A four-block schedule has different requirements.

The AL Director explained to OCR that, at the high school level, students self-select to participate in AP and honors courses and that, generally, the District enrolls an interested student based on his/her individual preparedness for a course. The Principal of East High School (Principal A) and the school's AP Coordinator stated that East High School does not use prerequisites to determine AP or honors enrollment and that there is open access to AP and honors classes. (As a general rule, honors courses at the school are for 9th and 10th grade students in core content areas.) The AP Coordinator stated that 8th grade counselors advise 8th grade students who might be interested in honors courses for the 9th grade. Counselor A stated that LaFollette High School uses "preferred sequencing" in counseling students, which involves suggesting a sequence of courses that a student needs to complete in order to succeed in a specific honors or AP course. Middle school teachers (e.g. foundational math teachers) also counsel students on preparing for AP course offerings in high school, although this is done informally rather than on a systematic basis.

OCR's review of the District high schools' curriculum guides indicated that the high schools, particularly East High School and West High School, occasionally utilized prerequisites or required students to consult with or obtain instructor consent as a requirement to enroll in AP or honors courses. In other instances, District high schools advised students about course sequencing or recommended that students take certain courses before enrolling.⁵

High school counselors interviewed by OCR asserted that large caseloads are a disadvantage to effective counseling. In order to better inform students about AP courses, OCR was informed that Memorial High School was developing an approach involving students of color in AP courses becoming mentors to underclassmen who have an interest in taking AP classes in the future.

The AS for Learning stated to OCR that the District conducts outreach to parents regarding AP offerings, including at family nights for incoming 8th grade students and families. These events offer information about the high school curriculum, including AP courses. District high schools offer translation services at these information sessions for parents whose first language is not English. Counselor A said that, despite the efforts at LaFollette High School, parents do not have a good understanding of the AP options at the school. She said the school is trying to determine the most effective interventions that will identify AP options to parents and answer parents' questions about the AP program. The Principal of LaFollette High School (Principal B) explained to OCR that the District is trying to engage minority parents in creative ways, such as conducting weekly parent-teacher nights at a restaurant with free food, childcare, and transportation. Similarly, a counselor at East High School indicated his/her school has sought to improve its communication with minority families by holding parent-teacher conferences in the evenings and/or at locations that are more convenient for parents who are unable to come to the school and by having community dinners.

⁵ For example, at East High School, students who wish to take Environmental Science are advised first to take Biology and Chemistry. Students wishing to enroll in AP Chemistry are advised first to take regular Chemistry, Physics, and Algebra 2.

Racial Disparities in AP Participation

African-American and Hispanic students are disproportionately underrepresented and white students are disproportionately overrepresented in the District's AP programs. According to data provided by the District, there were 2,965 enrollments into AP courses during the 2013-14 school year.⁶ Of these enrollments, 69.1% (2,049) were by white students, although only 48.0% (3,523) of the District's 7,338 high school students were white students. Conversely, African-American students comprised 3.8% of these enrollments (114) and Hispanic students comprised 7.5% of the enrollments (223), although comprising 19.5% (1,429) and 15.5% (1,138), respectively, of the total high school enrollment.

The 114 enrollments by African-American students in AP courses represent a rate of 8.0 AP enrollments for every 100 African-American students. Hispanic students enrolled at a rate of 19.6 AP enrollments for every 100 Hispanic students. Alternatively, white students enrolled at a rate of 58.2 AP enrollments for every 100 white students. Thus, in the 2013-14 school year, enrollments by white students in AP courses was 7.3 times greater than enrollments by African-American students and 3.0 times greater than enrollments by Hispanic students.

The magnitude of the racial disparity in AP enrollment is worse for math and science AP courses. There were only 18 math and 17 science AP enrollments by African-American students, a rate of 1.2 math and 1.1 science AP enrollments per 100 African-American students. There were only 44 math and 38 science AP enrollments by Hispanic students, a rate of 3.9 math and 3.3 science AP enrollments per 100 Hispanic students. By comparison, there were 526.5 math and 368 science AP enrollments by white students, a rate of 14.9 math and 10.4 science AP enrollments per 100 white students. Thus, in the 2013-14 school year, enrollments by white students in AP math and AP science courses were 12.4 and 9.5 times greater, respectively, than enrollments by African-American students, and 3.8 and 3.2 times greater, respectively, than enrollments by Hispanic students.

Further, the data provided by the District show that there was underrepresentation of African-American and Hispanic students in AP courses at each high school in the District. During the 2013-14 school year, the disparity between African-American students' participation and all other students' participation was statistically significant in 12 of 15 AP courses offered at East High School, 5 of 13 courses at LaFollette High School, 13 of 17 courses at Memorial High School, and 9 of 14 courses at West High School. The disparity between Hispanic student enrollment and all other students' enrollment was statistically significant in 2 of 15 AP courses offered at East High School, 0 of 13 courses at LaFollette High School, 6 of 17 courses at Memorial High School, and 8 of 14 courses at West High School.

In addition, African-American students' underrepresentation in AP math was statistically significant in all 12 of the AP math offerings that were offered at every District high school (in the three courses of Calculus AB, Calculus BC, and Statistics), and Hispanic students' underrepresentation in AP math was statistically significant in 3 of the same 12 AP math

⁶ The data reflect the total number of enrollments into AP courses. A student who enrolled in one AP course during the entire school year was counted one time for enrollment in an AP course. A student who enrolled in more than one AP course during the entire school year was counted the total number of times he/she enrolled in an AP course. For example, a student who enrolled only in AP French was counted once and a student who enrolled in AP French and in AP Microeconomics was counted twice for purposes of determining enrollment totals.

offerings. As for participation in AP science, African-American students' underrepresentation was statistically significant in 8 of 12 offerings of AP science (in the three courses of Physics C, Chemistry, Biology and Environmental Science), and Hispanic students' underrepresentation was statistically significant in 3 of the same 12 AP science offerings.

AL Programs: Elementary, Middle and High School Levels

Scope, Consistency and Alignment, and Administration

The District's AL Department is responsible for ensuring AL programming for students in grades one through eight, and then on through grade twelve. The District's Advanced Learner Plan (AL Plan)⁷ states that the Department's vision is to "create and maintain a robust, culturally and linguistically responsive system for identifying, monitoring and serving advanced learners." The District's AL program is not a specific program; rather, the AL Department "works to identify advanced learning needs within a classroom, grade level, subject area, school or across the district."⁸ The Plan addresses five advanced learner areas or domains, in conformance with state law: General Intellectual, Specific Academic, Leadership, Creativity, and the Arts.⁹

AL services are provided at all of the District's elementary and middle schools. There are no specific AL classrooms and there are no AL standardized courses.¹⁰ The AL Director explained to OCR that at the elementary school level the AL program attempts to identify and meet the needs of students and provide extended opportunities through differentiated instruction or curriculum replacement. The AL Director stated to OCR that at the middle school level there is a "marriage" between the AL services offered to elementary and high school students. In other words there are some middle school students taking high school level courses, such as Algebra I honors, and others receiving differentiated instruction similar to that received by advanced learners in the elementary schools. The AL programming provided at the high schools includes participation of students in leadership programs such as student government and restorative justice. The Director acknowledged, and OCR's investigation revealed, that there is variation in AL programming among District schools.

Administration of the District's AL programs is facilitated by AL-Instructional Resource Teachers (AL-IRTs). There is one AL-IRT who serves every two to three elementary or middle school buildings to support advanced learning needs, and also an AL-IRT who oversees AL programs at the District's four traditional high schools. The AL-IRT at the high schools assists with providing classroom differentiation in music and visual arts courses.

Access: Eligibility Criteria, Referral and Identification

The District reported to OCR that, historically, the only broadly administered assessment used specifically for the purpose of considering AL eligibility was a standardized exam called the Cognitive Abilities Test (CogAT).¹¹ The District said that during the 2011-2012

⁷ <https://advanced.madison.k12.wi.us/files/tag/Advanced%20Learner%20Plan-9.29.14%20%281%29.pdf>

⁸ <https://advanced.madison.k12.wi.us/faq.htm>

⁹ <https://docs.legis.wisconsin.gov/statutes/statutes/118/35/4>

¹⁰ There are no enrollment limits for the AL program.

¹¹ The District describes the CogAT's standardization sample as more than "160,000 students from public, Catholic and private, non-Catholic schools. The CogAT is a popular, well-established test of educational

and 2012-2013 school years, students in 2nd and 5th grades were administered the CogAT, and during the 2013-2014 school year, students in 2nd and 5th grade were administered a screener version of the CogAT. Information provided by the District on CogAT score distributions in 2011-2012 show that, “Overall, white and high-income students score much better on the CogAT than their peers.”¹²

The District acknowledges the racial gap in CogAT performance and has studied ways to address the issue. In 2013 its Research and Program Evaluation Office produced a study on standardized test performance by minority students. In addition, the District’s AL Plan seeks to address the effects of the racial gap in CogAT performance by broadening the District’s reliance on qualitative data. The AL Plan states: “Qualitative data provides another lens by which we view a student, providing a more complete picture of a student. Unlike quantitative data, qualitative data looks at a preponderance of evidence to make decisions.” Quantitative and qualitative data from the following measures are currently used to identify advanced learners at the elementary, middle, or high school level. These measures are not used for high school honors and AP courses because enrollment in such courses is voluntary, albeit sometimes with instructor consent or after completing prerequisite or suggested coursework.

Quantitative Data (not exhaustive):

- CogAT/CogAT screener (CogAT) – Grades 2 and 5
- Measures of Academic Progress (MAP) – Grades 3 - 8
- Wisconsin Knowledge and Concepts Exam (WCKE) – Grades 4, 8, and 10
- Smarter Balanced – Grades 3 - 8
- ASPIRE – Grades 9 and 10
- ACT – Grade 11

Qualitative Data (not exhaustive):

- U-Stars: Teacher’s Observation of Potential in Students (TOPS) inventories
- Parents/Guardians inventories
- Student Work Samples
- Educator Rating Scales
- Leadership, Creative, and the Arts Rating Scales
- Jot Forms¹³

The AL Plan states that the data is evaluated to create a consideration roster of advanced learners. While this report lists students who achieve within an established percentile range, students at other percentiles who show an aptitude based on other available data are not excluded from the roster. The AL Plan includes a chart showing that for the CogAT, MAP, Smarter Balanced, and ASPIRE/ACT exams, a student must score at or above the 95th percentile on any applicable test in order to be considered for AL instruction based purely on quantitative data. The AS for Learning referred to CogAT and MAP scores as “cut scores.”

aptitude that has undergone complete restandardization. It has strong psychometric properties with reliability and validity estimated to be from .70s to .90s.” The CogAT is administered to non-ELL and ELL students.

¹² For example, African-American and Hispanic students in the 2011-12 school year represented 18.7% and 18.3% of fifth grade students, respectively. However, African-American students represented 0% of the students who scored above the 96th percentile in the verbal and quantitative sections of the CogAT, and Hispanic students represented 0% of the students who achieved such a score on the verbal section and 5% of those who achieved such a score on the quantitative section.

¹³ Jot forms are completed by teachers and identify specific characteristics of a potential advanced learner, including the student’s strengths regarding those characteristics.

Once complete, the consideration roster is provided to schools for the AL-IRTs to work with Teacher Teams in guiding their instruction for the students.

The AL Plan states, “A student needing advanced intervention is a student who has been identified as an advanced learner AND requires advanced interventions beyond differentiated core instruction in order to meet their individual learning needs.” [Emphasis in original] The AL Plan includes an identification flowchart illustrating two methods by which a student can be identified as an Advanced Learner; either by the school, or through a parent referral.

OCR learned from interviews with the AL Director, AL-IRTs and counselors about the District’s referral and identification process. The AL Director told OCR that the District’s elementary and middle school students are identified for AL instruction based on classroom and District assessments, data, and parent/teacher referrals. The AL Plan includes a form for parents who, after discussing their child’s needs with the classroom teacher, remain concerned that their child needs but is not receiving advanced intervention in the classroom. Parents may complete and submit the form to the AL Director. OCR was informed that at the elementary and middle school level there is a four-step process for referral of students for AL instruction, including referral by parents or school staff, post-referral IRT-evaluation to determine whether advanced supports are necessary, monitoring to assess whether specific interventions meet a student’s needs, and programming for students whose needs are not met through interventions. Some AL-IRTs told OCR that the AL referral process is unclear and that the District has lacked a centralized repository of objective and subjective data for identifying students.

Outreach to Parents

The District provides parents with information regarding AL programs and the eligibility process in a variety of ways. District-wide outreach efforts include pamphlets about the AL Department, increasing access to information on the District’s website, presenting the AL Plan, and translating information about the AL program into Spanish. The Director explained to OCR that at many elementary schools a profile of the AL-IRT is included in the school’s newsletter, and there is outreach at parent resource nights with translation services available to parents with limited proficiency in English. He stated that most of the outreach occurs at the local building level through AL-IRTs rather than occurring District- or region-wide.

An AL-IRT informed OCR that Emerson Elementary has “Tuesday Night Lights,” a weekly networking and learning event for parents during which childcare is available. This event has included informational sessions for families of advanced learners, though all parents were invited to attend. According to an AL-IRT, Lincoln Elementary has “parent empowerment groups,” which includes attention to the concerns of Latino parents. An AL-IRT of two middle schools (Jefferson and Cherokee) told OCR that the decision to take an honors course may rest on the parent. A parent meeting occurs in the spring, but OCR was informed that attendance by minority parents is low.

Racial Disparities in AL Participation at Elementary and Middle School Levels

At the elementary and middle school levels, white students participate in the District's AL program at a higher rate than African-American or Hispanic students.¹⁴ During the 2013-14 school year, at the elementary school level, 1,438 of 6,158 white students, 168 of 3,096 Hispanic students, and 145 of 2,523 African-American students were identified as advanced learners in at least one domain. Thus, 23.4% of white elementary students were identified as advanced learners, whereas 5.4% and 5.7% of Hispanic and African-American elementary students, respectively, were identified as advanced learners.

The gap in AL identification between white students and African-American and Hispanic students widens at the middle school level. During the 2013-14 school year, at the middle school level, 932 of 2,340 white students, 99 of 1,083 Hispanic students, and 59 of 1,016 African-American students were identified as advanced learners in at least one domain. Thus, 39.8% of white middle school students were identified as advanced learners, whereas 9.1% and 5.8% of Hispanic and African-American middle school students, respectively, were identified as advanced learners. The disparity in the identification rate of advanced learners between white and African-American and Hispanic students was statistically significant at both the elementary and middle school level.

Elementary Schools

Enrollment data show that African-American students were 17.4%, Hispanic students were 21.4%, and white students were 42.5% of all elementary students in the District in the 2013-14 school year. Data show that there was underrepresentation of African-American and/or Hispanic students among advanced learner students at each elementary school during the 2013-14 school year. Data show that at all 32 schools African-American students were identified at lower rates than white students and that at 31 schools Hispanic students were identified at lower rates than white students.

The disparity in AL identification rates between white and African-American students was statistically significant at 27 elementary schools. White students at the 27 schools were identified as advanced learners at a rate more than 2 times greater than the rate for African-American students.¹⁵ At 14 schools, white students were identified as advanced learners at a rate more than 5 times greater than the rate for African-American students.

The disparity in AL identification rates between white and Hispanic students was statistically significant at 24 elementary schools. White students at 22 of the schools were identified as advanced learners at a rate more than 2 times greater than the rate for African-American students.¹⁶ At 12 schools, white students were identified as advanced learners at a rate more than 5 times greater than the rate for Hispanic students.

¹⁴ The data regarding elementary and middle school participation rates reflect non-duplicated student counts, meaning each student is counted no more than once.

¹⁵ At five schools (Franklin, Lapham, Lindbergh, Midvale, and Nuestro Mundo), white students were identified as AL at a rate not greater than 2 times the rate for African American students, however, the rate for white students was still greater than the rate for African American students.

¹⁶ At six schools (Ivehjem, Falk, Huegel, Nuestro Mundo, Marquette, and Sandburg), white students were identified as AL at a rate not greater than 2 times the rate for Hispanic students, however, the rate for white students was still greater than the rate for Hispanic students. White students were not identified as AL at a greater rate than Hispanic students at Van Hise.

Middle Schools

Enrollment data show that African-American students were 19.5%, Hispanic students were 19.2%, and white students were 43.6% of all middle school students in the District in the 2013-14 school year. Data show that there was underrepresentation of African-American and Hispanic students among advanced learner students at each of the District's 12 traditional middle schools during the 2013-14 school year. Data show that at all 12 schools African-American and Hispanic students were identified at lower rates than white students.

The disparity in AL identification rates between white and African-American students was statistically significant at 11 of the 12 middle schools. White students at the 11 schools were identified as advanced learners at a rate more than 2 times greater than the rate for African-American students. At 7 schools, white students were identified as advanced learners at a rate more than 5 times greater than the rate for African-American students.

The disparity in AL identification rates between white and Hispanic students was statistically significant at 11 of 12 middle schools. White students at 10 of the 11 schools were identified as advanced learners at a rate more than 2 times greater than the rate for African American students. At 4 schools, white students were identified as advanced learners at a rate more than 5 times greater than the rate for Hispanic students.

District Efforts to Address Racial Disparities in AL Programs

The District has taken steps to reduce the racial gap in its AL programs. The AL Director told OCR that there is a sense of urgency in this work. The District's AL Plan, adopted six months after OCR notified the District of this compliance review, continues to be the keystone of the District's reform efforts. It follows the adoption of a District policy stating that "students identified as advanced learners should embody and include the diverse populations of [the District's] school communities including . . . historically underrepresented [students] in the District's programs for advanced learners."¹⁷ The AL Plan sets out the basic elements of the District's process for identification, intervention and family engagement in the AL process, and also presents action steps for monitoring advanced learners to ensure ongoing success.

Engaging Outside Consultants

As part of its ongoing reform effort in the area of AL services, the District has engaged education consultants and outside organizations for expert assistance. In August 2014, the District received from one of its consultants a report entitled "Building Personalized Student Pathways: A Review of Coursework and the High School Experience in MMSD" (Consultant Report). The report addressed the issue of equal access to AL programming, including at the middle school level. The consultant found that access to AP courses varied considerably by school and the race of students, with African-American and Hispanic students particularly underrepresented. The Consultant Report recommended increased guidance about honors coursework, greater resources and staffing in counseling departments, more consistent parental outreach, and curriculum alignment.

¹⁷ <https://board.madison.k12.wi.us/policies/3555>.

Since May 2015, the District has engaged the services of the National Equity Project (NEP), a non-profit organization based in Oakland, California, which works to address learning and opportunity gaps in education. NEP provided multiple trainings to District staff during the 2015-16 school year, including professional development presentations to principals. NEP's analysis, consultation, and professional development presentations led the District to create a plan for equity work across the District called, "5-Year Outlook School Level Implementation." The District allocated \$120,000 in 2016-17 school year for continued assistance from NEP.

In August 2016, the District entered into a partnership with Equal Opportunity Schools (EOS), a non-profit organization based in Seattle, Washington, that is dedicated to providing access to college preparatory courses for high school students of all races. EOS began assisting the District's Memorial High School in efforts to expand access for all students to the AP program during the 2016-17 school year.

Restructuring the Advanced Learning Department

According to the AL Director, a key component of the District's efforts to reduce racial disparities in its AL program is enhancing the presence of AL staff at schools. In the 2014-15 school year, the District began moving AL staff out of the central office and into school buildings. The AL Director expressed to OCR the belief that the lack of presence by AL staff at each building has contributed to the underrepresentation of minority students in the AL program, noting that the presence of AL staff in buildings increases the identification of advanced learners through means other than standardized test scores. In addition, the AL Director told OCR that he had met with principals to assess the AL program at each building, address each building's individual needs and resources, and discuss updates to the AL Plan.

Aligning Curriculum

The District is continuing to focus on aligning its curriculum. The Consultant Report pointed out a lack of consistency between courses of the same name within and across high schools and a lack of consistent coordination between grade levels in the same subject. The District's Director of Curriculum and Instruction, who is overseeing the curriculum alignment across high schools, informed OCR of the District's recent completion of a three-year plan for course vetting and course alignment and of its plan to standardize AP courses across the four high schools and ensure that certain core AP courses, such as Physics and English, are offered at all four schools.

Improving Data Collection

The AS for Learning explained to OCR that the 2014-15 school year was the first year that the District had undertaken systematic data collection for the Advanced Learning Department. Previously, the District kept track of advanced learner identification and interventions through a combination of paper binders and electronic recordkeeping. The District's new data system, OASYS, allows for better tracking the identification of and programming for every advanced learner in the District. AL-IRTs are now able to input into the data system information identifying interventions, tools and materials used, as well as progress monitoring tools. District staff can review this information to determine which qualitative referral and identification methods are most successful.

Engaging Parents

The Advanced Learner Department schedules annual meetings with a parent advisory council, composed of parents and community volunteers, whose charge is to “provide context as to how the Advanced Learner Plan is being carried out” and give the District an opportunity to convey information about the AL Plan. The AS for Learning told OCR that the District is working to improve its messaging to parents on the value of advanced courses, and said that engaging minority families about advanced learning is a challenge for all of the District’s schools. Ideally, as AL-IRTs gain familiarity with school communities and form relationships, the District will improve its outreach to minority families. The District is also coordinating with local organizations such as United Way and the Urban League to improve its outreach to minority families regarding advanced learner issues.

Improving Counseling

Starting in the 2013-14 school year, the District began changing its school counseling program to align with the American School Counselor Association (ASCA) national model. According to the District, the objectives of this reform are to: (1) support all students in meeting key academic, social-emotional, and career standards; (2) better align school counseling practices across the District; and (3) provide effective training to school counselors. The District’s consultant described the ASCA model as “widely regarded as an authoritative framework to support the work of counselors.” The ASCA model recommends a ratio of 250 students per counselor and an allotment of 80 percent of the counselor’s time spent providing direct services to students. The consultant found that only one high school (East High School) averaged that ratio among its counselors and recommended the District increase its counseling staff and better define counselors’ roles.

Supporting AVID

The District plans to focus on enrolling AVID students in AP and honors courses and supporting AVID students’ success in advanced courses. The AL Director indicated that there is an emphasis on providing supports to AVID students to take more challenging coursework.

SUMMARY OF INVESTIGATION AND RESOLUTION

OCR’s analysis of District AL participation data, including AP course participation, shows there is a substantial and widespread disparity between the participation of white students on the one hand, and African-American and Hispanic students on the other. This disparity was found at the elementary, middle, and high school levels. There is a statistically significant disparity in AL participation by race at most elementary schools in the District, and the disparity is worse at the middle school level. Statistically significant racial disparities in AP enrollment were found at every traditional District high school, and such disparities were pronounced in the areas of math and science.

The District has acknowledged the racial disparities and has begun to reform and reorganize its AL program, including AP offerings. The District hired an AL Director in July 2014, after OCR initiated this compliance review, and has been implementing its AL Plan. The AL Plan emphasizes the importance of qualitative as well as quantitative factors for referral into the AL program. This emphasis represents a significant change, in light of the racial disparity in

the standardized test outcomes that the District historically used to identify advanced learners. The District has also taken steps to reduce prerequisites as a potential barrier to entry into AP programming. These reforms are new, however, and OCR found that the use of prerequisites and referrals based on quantitative data continue to be used. A network of AL-IRTs has assisted in the coordination of the District's efforts at individual schools, although OCR's investigation indicates that there are too few AL-IRTs and school counselors to be systematically effective. For example, during the 2014-15 school year, a single AL-IRT position had to cover the District's four high schools, which served nearly 7,500 students.

In recent years, the District has engaged in several initiatives that it views as promising to begin to address the racial gap in student participation in its AL program, including AP offerings. These include the use of an expert consultant and partnerships with non-profit organizations that provide expertise in closing the equity gap. The District has also found promise in the AVID program, which has demonstrated success in improving the academic performance, attendance, and honors/AP enrollment rate for minority participants. However, in light of personnel and program changes over recent years, the District has not yet fully implemented programs or changes in areas such as curriculum and AL eligibility or evaluated progress comprehensively. However, the District recognizes the racial disparity in the participation of students in its AL program, including AP offerings, and has taken several steps to begin addressing this issue.

The District expressed interest in resolving this compliance review by means of a voluntary resolution agreement during OCR's investigation. Based on the information obtained in OCR's investigation, OCR determined during the course of its investigation that it is appropriate to resolve the compliance review with a resolution agreement. The enclosed Resolution Agreement is fully aligned with the issues investigated in this compliance review and with the applicable regulations. Based on the commitments the District has made in the agreement, OCR has determined that it is appropriate to close the investigative phase of this compliance review. The provisions of the Resolution Agreement are aligned with OCR's compliance concerns regarding the specific civil rights issues examined in the review. The Resolution Agreement requires the District to:

- Enter into partnership with an equity consultant in order to ascertain and remove barriers to enrollment in AP courses by African American and Hispanic students and continue with other initiatives in addressing underrepresentation of African American and Hispanic students in other advanced coursework and programming options;
- Complete a review and assessment of its advanced coursework and programming options, including current referral and eligibility criteria for these programs, which will among other areas address the relationship between foundational course enrollments and advanced coursework and programming options, consistency across schools, effects of curriculum alignment, efficacy of data collections systems, effectiveness of AVID and other programs, and adequacy of counseling and outreach;
- Modify referral, eligibility and selection criteria and recruitment for participation in the District's advanced coursework and programming options, as needed, based on the findings of the review and assessment;
- Train staff on any modified referral, eligibility and selection criteria;

- Annually analyze data regarding the referral, identification and selection of students for the District’s advanced coursework and programming options to determine whether African-American and Hispanic students are identified and selected at rates commensurate with their enrollment rates and, as appropriate, its plan for addressing identified disproportionality;
- Conduct parent, community and student outreach, including counseling for students, regarding the District’s advanced coursework and programming;
- Continue the work of the District’s Advanced Learner Committee to assess the effectiveness of the District’s outreach efforts, coursework and programming options, and referral and identification practices, and, as may be appropriate, take steps to address root causes of identified racial disparities; and
- Assess the effectiveness of District efforts to increase participation of African American and Hispanic students in advanced coursework and programming options.

OCR will monitor implementation of the Resolution Agreement. The District agreed to provide data and other information to OCR demonstrating implementation of the Resolution Agreement in a timely manner. OCR may conduct additional visits and request additional information as necessary to determine whether the District has fulfilled the terms of the agreement and is in compliance with Title VI and its implementing regulation, 34 C.F.R. § 100.3, which was at issue in the compliance review. OCR will not close the monitoring of this agreement until it has determined that the District has complied with the terms of the Resolution Agreement and is in compliance with Title VI and its implementing regulation, 34 C.F.R. § 100.3.

Should the District fail to fully implement the agreement, then OCR will take appropriate action to ensure the District’s compliance with Title VI. Accordingly, if the District fails to implement the agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Resolution Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This letter sets forth OCR’s determination in an individual OCR compliance review. It is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR’s formal policy statements are approved by a duly authorized OCR official and made available to the public.

It is unlawful to harass or intimidate an individual who has filed a complaint, assisted in a compliance review, or participated in actions to secure protected rights.

OCR appreciates the ongoing cooperation received from the District during the investigation and resolution of this case. We particularly appreciate the cooperation of Dylan Pauly, Legal Services General Counsel, during the investigation and resolution discussions. If you have questions about this letter, you may contact Dawn Matthias at 312-730-1593 or dawn.matthias@ed.gov.

Sincerely,

Adele Rapport
Regional Director

Enclosure